IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 29...12...2004

Coram

The Honourable Mr.Justice V.KANAGARAJ

Crl.OP.No. 37509 of 2004 and
Crl.MP.No.11796 of 2004

1. Rev.Samuel D.Stephens
2. Pastor Paulraj ...Petitioners/Accused

-vs-

Pastor A. Samuel Ramasamy ...Respondent/Complainant

Petition filed under section 482 Cr.P.C. to call for the records relating to proceedings in C.C.No.655/2003 on the file of the Judicial Magistrate, No.II, Poonamallee and quash the same.

For Petitioners : Mr.K.S.Dinakaran
For respondent : Mr.Thomas Acquinas

ORDER

This petition is filed praying to quash the proceedings in C.C.No.655/2003 on the file of the Judicial Magistrate, No.II, Poonamallee.

2. The petitioners allege that the respondent has given a private complaint against the petitioners for the commission of an offence punishable under section 500 IPC in CC.No.655/2003. The respondent's case is that he is a Co-ordinate Pastor of World Wide Vision run by the Indian Gospel League of which, the first petitioner is the President and the second petitioner is the General Co-ordinator; that both the petitioners/accused on false allegations levelled charges against the respondent and directed him not to proceed with the activities and despite several letters no reply was given; that the petitioners held the All India Conference between 22.1.2003 and 24.1.2003 at Salem; that in spite of all efforts including the lawyer's notice dated 6.1.2003 issued to stop the conference, had no effect but only four goondas were sent from whom the respondent was saved by the Police; that the respondent also gave a report at Vepery Police Station.

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3. According to the respondent, the first petitioner sent a circular dated 16.1.2003 through the second petitioner to all Pastors stating that the activities of the respondent was not satisfactory and so monthly meeting of the Vision is stopped completely; that the contents of the circular are defamatory and lowering the petitioner's reputation; that therefore, the respondent filed a complaint on 17.2.2003 and it was taken on file under section 500 IPC; that the petitioners raised preliminary objection, but based on the Rule of the Supreme Court in Adalat Prasad's case that in a case of summons procedure, the lower court has no right to discharge and as such, the petitioners have to file this petition under section 482 Cr.P.C.

4. According to the petitioners, the respondent having filed the present complaint on 22.7.2003, anti dating, and suppressing material facts about the earlier complaint and the enquiry under section 202 Cr.P.C. and also in view of the fact that the records were misplaced and therefore cognizance of the offence by the court below is an abuse of process. Hence, this petition.

5. During arguments, the learned counsel appearing on behalf of the petitioners, reading out from the complaint and the documents regarding the proceeding initiated on the basis of the complaint of the respondent by the lower court, would point out that by Judicial Magistrate, No.II, Poonamallee, the cognizance of the complaint had been arrived at after recording of the sworn statement of the respondent/complainant on 22.7.2003 and would clarify that only before recording of the sworn statement such cognizance could be arrived at regarding the taking on file of the complaint and it is a big flaw committed on the part of the Court in taking cognizance of the complaint after recording the sworn statement of the complainant which could be seen from the return memo of the learned Magistrate dated 26.2.2004 thereby revealing that inspite of recording of the sworn statement of the complainant as early as on 22.7.2003 till 26.2.2004 the complaint had not been taken on file and the filing procedures have not been completed which comes to be known from the said return memo, requiring the documents to be filed along with the complaint, further specifying the documents to be furnished.

` 6. The learned counsel would further point out that the complaint does not say whether witnesses were present so as to examine them prior to summoning the petitioners, for prima facie case to be made out. The learned counsel would also cite the following decision rendered in NITIN V. BHIMANI vs. A.R.BASU (1995 Crl.LJ 1974) wherein it is held that:-

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"Having heard the learned Advocates for the parties and considering the materials on record, I find that while taking cognizance on the complaint of the opposite party herein, the learned Magistrate committed wrong and illegality in not taking cognizance first but he took cognisance of the offence after examination of the complainant. That is not the imperative of the law. On the contrary, it is the mandatory provision under Section 200 of the Code of Criminal Procedure that cognisance is to be taken first and thereafter the complainant and his witnesses so present to be examined. Thereafter, the question of issuance of summons will be coming in. The order impugned also suffers from another illegality i.e. the court has failed to record whether other witnesses for the complainant were present in court or not on that day. The trial court has failed to record that no other witnesses of the complainant were present. In such circumstances, the initial order of taking cognisance by the learned Magistrate dated 4.10.91 cannot be sustained in law and also the subsequent orders thereto, namely dated 4.10.91 are also not sustainable in law."

7. The next judgment cited on the part of the petitioners is one rendered in BRAHMANAND GOYAL vs. N.C.CHAKRABORTY (1974 Crl.LJ.1079) wherein it is held that if the prosecution witnesses are absent at the time of taking cognisance, the Magistrate must record in the order sheet the fact that they were not present. Otherwise, the cognisance is bad and improper and the whole proceedings are vitiated.

8. The third judgment cited by the learned counsel for the petitioners is one reported in REVANAPPA vs. S.N.RAGUNATH (1983 Crl.LJ 321), wherein it is held:-

"As the entire proceedings are before the trial court and as the initiation of proceedings viz., after examination of the witnesses taking of the cognizance itself is illegal, the entire proceedings starting from the stage of examination of the complainant and his witnesses also cannot be sustained. It is needless to say that when a complaint is present under section 200 Cr.P.C it is incumbent upon the Magistrate to have

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considered whether it is a fit case to take cognisance of the offences as contemplated under Section 190 Cr.P.C and if he thinks to take cognizance then he ought to take cognisance and thereafter to examine the complainant and witnesses, present, if any, and thereafter to issue process as contemplated under law....."

9. Yet another judgement would also be cited on the part of the petitioners rendered in M.MURUGAN vs. RANJINI MURUGAN (1990 LW Crl. 409), wherein the learned single Judge of this Court has decided to dismiss the complaint on the ground that it was a second complaint on the same set of facts, as a previous proceeding was quashed by the High Court, further ruling that not placing of facts before the Court in the prior prosecution would disentitle the complainant from preferring a second complaint and the facts cannot be placed before Court in instalments depending upon the success or otherwise of a prior litigation on a wait and watch basis.

10. On such arguments the learned counsel would end up saying that for all the above irregularities and inconsistencies which would form basis for the complaint to be taken on file, vitiates the proceedings which has to be declared void since the very complaint has been lodged and entertained not in the manner known to law.

11. In reply, the learned counsel appearing on behalf of the respondent would submit that there was no two complaints, one earlier and the other later, but there was only one complaint filed. The learned counsel would also point out from the compliant the relevant facts that the commission of an offence under section 500 IPC is a serious affair wherein the reputation of a man in the eyes of society is involved. The learned counsel would say that imputations made in the circular by the petitioners are disparaging, degrading and lowering the status of the respondent in the society. The learned counsel would further deny the allegations that the Magistrate failed to take cognisance of the complaint immediately on its file but did the same only after recording the sworn statement which is irregular. Anyhow, according to the learned counsel the trial that is to be held will be the answer and the petitioners could very well established their contentions before the trial court at the time of trial and would pray to dismiss the above petition.

12. In consideration of the facts pleaded, having record to the materials placed on record and upon hearing the learned counsel for both, what comes to be assessed by this Court is that a private complaint filed under section 200 Cr.P.C. in the

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Court of Judicial Magistrate, NO.II, Poonamallee contemplating the offence punishable under section 500 IPC against the petitioners herein is under challenge in the above petition by them praying to invoke the inherent powers of this Court to quash the complaint as illegal and void on certain legal grounds.

13. For the commission of the offence alleged to have been perpetrated by the petitioners as per the complaint of the respondent the ingredients are given under Section 499 IPC, which if come to be proved, becomes punishable under section 500 IPC and in fact the respondent is the Regional Co-ordinator of an organisation called World Wide Vision run by the Indian Gospel League of which the first petitioner is the President and the second petitioner is the General Co-ordinator. It seems that the petitioners in exercise of their powers as the President and General Coordinator, on certain allegations levelled against the respondent had directed him not to proceed with the activities and despite several letters, no reply was given and ultimately, the first petitioner seems to have sent a circular through the second petitioner to the members of the region stating that "the activities of Pastor Samuel Ramsamy who has been elected by the Pastors of the region who acts voluntarily are not satisfactory and so the monthly meeting of vision is stopped temporarily".

14. The above statement according to the respondent/ complainant is a deplorable and pernicious and would harm the reputation, lowering the social status and moral character of the respondent/complainant in the eye of the society and hence, would come forward to file the above complaint before the jurisdiction Magistrate seeking to punish the petitioners for the commission of offence under section 500 IPC.

15. For the commission of offence punishable under section 500 IPC, the ingredients as contemplated under section 499 IPC should be fulfilled, that is, there must be an imputation against the complainant and the imputation must be likely to lower the reputation and dignity of the complainant in the eye of the society and that the imputation shall be false.

16. From the statement alleged to have been made in a circular dated 16.1.2003 by the first petitioner to the members of the Regional Committee of the League does not seem to be either defamatory so as to deteriorate or affect the reputation of the respondent in the society in order to lower his status or character of the respondent in the eye of others which impression could only be formed on a plain reading of the statement circulated by the first petitioner herein.

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17. The first petitioner in his capacity as the President of the League commenting that the respondent in acting voluntarily his services are not satisfactory thereby stopping the monthly meeting of the vision temporarily is plain remark made on the part of the first petitioner in the usual course of his business in total realization of his duties and responsibilities as the President and even if this statement is proved to be false it cannot in any manner be termed as either disparaging or defamatory and therefore, factually it should be ruled that to the requirements of law no offence of defamation could be contemplated and it is worth mentioning that the lower court without going into this factual aspect has taken cognizance of the offence since no prima facie case could be made out on the face of the complaint at all.

18. Further coming to the other legal factor that the Magistrate prior to taking cognizance of the complaint, has recorded the sworn statement of the complainant which is false has been borne out by the first two judgments cited supra and in that score also, the proceedings initiated by the Court of Judicial Magistrate, No. II, Poonamallee becomes liable to be quashed.

19. Thirdly, the non production of witnesses on the date of filing of the very complaint and the non production of the documents which are basis of the complaint would only lead to wilful suppression of material evidence and would lead to vitiate the proceedings initiated by the lower court.

20. On a overall consideration of the facts and circumstances of the case registered by the Court of Judicial Magistrate, No.II, Poonamallee on the complaint of the respondent against the petitioners herein, the same cannot be sustained in law for the above reasons assigned and the said proceedings only becomes liable to be quashed and is quashed accordingly.

In result,

(i) The above Criminal Original Petition succeeds and the same is allowed.

(ii) The proceedings initiated in C.C.No.655/2003 on the file of the Court of Judicial Magistrate, NO.II, Poonamallee is quashed as illegal and void.

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(iii) Consequently, connected Crl.MP.NO.11796 of 2004 is closed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate, No.II,
Poonamallee

2. -do- Thro' The Chief Judicial Magistrate
Chingleput

2 ccs to Mr.K.S.Dinakaran, Advocate, SR.58068

jsk (co)

dv

Order in
Crl.OP.No.37509 of 2004

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